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Artificial Intelligence (AI) in Arbitration

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Abstract

The primary objective of this research paper is to investigate the application of AI in arbitration and to develop innovative approaches that can significantly improve the overall arbitration process. This research aims to conduct a comprehensive analysis of the existing practices and procedures in arbitration, including the identification of inefficiencies, challenges, and limitations. By critically evaluating the strengths and weaknesses of the current system, this research seeks to provide a solid foundation for the development of AI-based solutions. This research objective involves identifying specific areas within the arbitration process where AI technologies can be effectively incorporated to address challenges and enhance efficiency. This includes exploring opportunities for AI in case management, evidence analysis, decision-making, and dispute resolution procedures. The objective is to identify potential use cases where AI can make a significance.

Keywords: *Innovative approaches, Limitations, Arbitration, Resolution, Practices and procedures,*

Introduction

John McCarthy who is the father of Artificial intelligence along with, Marvin Minsky, Nathaniel Rochester, and Claude E. Shannon at the Dartmouth wrote a proposal to introduce AI as a field of study in the field of computer science. To do this a conference in Dartmouth was held in 1956 and it became very significant later on as in this conference the term Artificial intelligence was coined. John McCarthy defined it as, "making a machine behave in ways that would be called intelligent if a human were so behaving". It combines compute science and robust datasets to facilitate problem solving. Artificial intelligence has experienced exponential growth and is widely employed in sectors like manufacturing, healthcare, advertising, and others in order to reduce human error in the relevant fields. It has been predicted to transform all the sectors with a steady rate in the following years. It has become an integral part of our day to day lives as it is used frequently. Some examples of where AI is used are online shopping

and its advertisements by providing personalized recommendations, web search, machine translations, cyber security, self-driving cars and digital personal assistants.

The legal industry has also started to adopt artificial intelligence. Law and machine learning both operate on principles that are quite similar as they both use past precedents to infer rules that should be applied in different circumstances and are logic oriented. Therefore, this would give successful results and change the legal industry dramatically. AI uses machine learning where it can identify data and varies it algorithm on the basis of existing data and user feedback. AI also employs deep learning which comes under machine learning, it is inspired by the workings of the human brain and processes information that needs human intelligence and presents it in a comprehensible way.

Artificial intelligence is now being used in Alternative dispute remedies like arbitration. AI uses predictive analysis which helps in deciding on a course of action, predicts results and implications of it, which helps in reviewing and producing efficient documents. It uses text mining to scan and analyze the content of the document so the large amounts of information can be simplified, this would help greatly in reducing cost of research, workload, time spent, and make paperwork much easier. AI also assesses the relevancy of evidence and can provide information on how it was discovered and its analysis briefly. AI tools like Lexis Nexis, Exa Match and Do Not Pay are used for this purpose.

Another place where AI is used in arbitration is arbitrator selection. For example, tools like Arbitrator intelligence or Billy Bot generate questionnaires and after analyzing them it produces a report and checks the arbitrator's inclination based on past decision making in arbitration. The relevant expertise of arbitrators on various issues and disputes is also checked. This provides for a reliable resource for arbitrator selection. In fact, pre-selecting potential arbitrators based on subject-matter, required expertise, and other defined criteria can lead to better arbitrator selection and efficient resolution of disputes. As per the 2016 study of predictability of ECHR and a decision given by the Supreme Court of the United States, the precision in AI affiliated arbitrations was found to be 79% and 70.2% accurate respectively.

Historical Background of AI

In her book American Arbitration: Its History, Functions, and Achievements, Frances Kellor, the only female founder of the American Arbitration Association, gave a brief overview of arbitration and stated that it is one of the oldest forms of dispute resolution. Men used arbitration to resolve conflict, adjust differences, and settle disputes long before laws were created, courts were set up, or judges defined legal principles. According to biblical theory, the first arbiter to resolve a dispute involving two women claiming to be the mothers of a baby boy was King Solomon. A few have also claimed that King Solomon's arbitration process was analogous to current arbitration practices. As early as 337 B.C., Alexander the Great's father, Philip the Second, employed arbitration to settle territorial conflicts in Greece. Since trade conflicts were first settled by peers as early as the Babylonian era, arbitration owes its origins to commercial disagreements[1]. The Indian Arbitration Act, of 1899, a more specific piece of legislation, recognized arbitration in India. However, it was limited to the three cities that held the presidency—Calcutta, Bombay, and Madras. The Code of Civil Procedure, 1908's Section 89 and Schedule II also codified arbitration. The provisions of arbitration were expanded to

[1] Hitesh, *Evolution of Arbitration Law in India,* LEGAL SERVICE INDIA (June 05, 2023, 11:37 PM), https://www.legalserviceindia.com

apply to various British Indian provinces to which the Act of 1899 was not extended, by Section 89 and Schedule II of the Code of Civil Procedure, 1908.

The Arbitration Act of 1940 was replaced by the more modern Arbitration and Conciliation (Amendment) Act of 2019 in a manner that reflects how the arbitration legislation has grown on its own in response to the changing circumstances:

1. Arbitration Act, 1940

The Arbitration Act of 1940 was enacted in India to consolidate and amend the law relating to arbitration. The Act was a significant advancement in creating a complete law addressing all significant issues of arbitration, however, in light of the Government of India's liberalization policy, it has become increasingly urgent to replace the Act. Conciliation as a method of resolving conflicts was not expressly recognized by law. The Act empowered courts to get involved in the arbitration process at any moment, from the arbitrator's nomination through the interim phase and award issuance. Since then, it has become customary for the court to monitor arbitration proceedings rather than granting them the status of an alternative dispute resolution process. In addition to this, the Indian courts had a huge backlog of cases, which caused the court cases' resolution to be delayed. Even after the award has been made and the parties have participated in the arbitration without objection, the Act did not forbid them from bringing complaints regarding the proceedings, the legality of the arbitration agreement, or the arbitration's structure. The Act gave rise to a wide range of reasons for challenging the award, including its merits. Foreign investors were hesitant to invest in India because they demanded a stable economic environment and a steadfast commitment to the rule of law.

2. Arbitration and Conciliation Act, 1996-

The Arbitration and Conciliation Act of 1996 is an Act to define the law relating to conciliation and for matters connected therewith or incidental thereto as well as to consolidate and amend the law relating to domestic arbitration, international commercial arbitration, and enforcement of foreign arbitral awards. The Law Commission's 76th report identified several flaws, and on August 22, 1996, the Act of 1996 went into effect to address them. The 1985 UNCITRAL Model Law on Internal Commercial Arbitration and the 1980 UNCITRAL Conciliation Rules serve as the foundation for the Act. In the case of Bharat Aluminum and Co. v. Kaiser Aluminum and Co. (hence referred to as BALCO), it was decided that Part I of the Act does not apply to Part II of the Act since Part I and Part II were mutually exclusive of one another. The BALCO decision the result that the Indian courts could not consider interim applications under Section 9 of the Act in foreign-seated arbitrations covered by Part II of the Act.

3. The Arbitration and Conciliation (Amendment)Act, 2015-

On October 23, 2015, the Arbitration and Conciliation (Amendment) Act 2015 went into effect with the goal of facilitating quick contract enforcement, simple financial claim recovery, reducing the backlog of court cases, and accelerating the arbitration process in order to promote India as an investor-friendly nation with a strong legal system and make doing business there easier.

- Some significant changes include the following:
- The provisions of Sections 9, 27, clause (a) of sub-section (1), and sub-section (3) of Section 37 must likewise apply to international commercial arbitrations, subject to any agreement to the contrary. This was stated in a proviso to Section 2(2).
- Additionally, Section 9 was modified to state that after the arbitral tribunal is established, the Court shall not consider an application unless circumstances so require, minimizing the Court's involvement.
- Additionally, Section 17 was altered, transferring to the arbitral tribunal all Section 9 Court powers.
- The deadline for submitting an arbitral award was likewise set at twelve months following the formation of the arbitral panel, and this was incorporated by virtue of Section 29A (2015 amendment) into the Act of 1996.
- The scope of court intervention was narrowed by amending Section 34 of the Act of 1996.

4. The Arbitration and Conciliation (Amendment)Act, 2019-

The 2019 Arbitration and Conciliation (Amendment) Act was passed. This amendment's primary goals were to provide an efficient arbitration framework, support institutional arbitration, and eliminate some doubts brought on by the 2015 amendment. According to the 8th Schedule, as added by the Amendment Act of 2019, a person must be an advocate within the meaning of the Advocates Act, 1961, with 10 years of experience practicing as an advocate in order to be eligible to serve as an arbitrator. There were some questions over whether or not this clause applied to international arbitrators as well.

Current Scenario

Artificial Intelligence has made many tasks easier for practitioners by automating them, it is not enough to get rid of junior partners. Even though it has benefits, it is known as the "most disruptive technology" in the field, and its effects will be seen over the next ten years. This is because of the pushback, which comes from the fear that AI will make our work harder. People think that in the years to come, AI will do the work of paralegals and partners. There's no way to know if this claim is true because it's not completely thrown out. But, as J. Goodman says, "you may or may not like your mother-in-law, but she will affect your relationship in some way or another." The same is true for AI in judgement.

To calm this fear, we must remember that Artificial Intelligence can't work without a large amount of data and user input, as we've already talked about. This is especially important when it comes to arbitration, where most of the papers are private and there are fewer of them than in other practices. Training and tests are also limited by the fact that there are many rules and different areas of practice. Also, there is no system of standards in arbitration. Instead, each case is settled based on its own facts. Another important thing to think about is that AI tools can't fully replace the practical understanding and subject knowledge of experts in specialist fields, because AI tools process information in a way that is more like inductive reasoning than

logical reasoning. Because of all of the above, it is very hard for AI to copy many parts of arbitration.[2]

Artificial Intelligence hasn't been able to stop arbitration from working. Even though. Hugh Carlson says that the disruption would happen when you could say to an AI, "Alexa, write me three to four paragraphs about why cash flow isn't a good way to value this company and send me highlighted PDFs of the sources you used," and the AI would do what you asked. In recent years, there has been a lot of talk about how Artificial Intelligence-judges (or machine arbitrators) could replace human arbitrators. In short, making legal decisions involves mental and emotional skills that AI does not have and may never have. Even so, and just for the sake of argument, let's say that this is a possibility. The laws around the world are based on natural people and don't allow for this to happen. The parties also like to know why experts came to a decision, which is almost never taken away. AI can't meet this requirement because it would be more likely to give a clear answer based on probabilistic reasoning, which wouldn't be legitimate. Because of this, it may hide a lot of disagreements by calling them "objective analysis." Because of this, thinking will always be something that only humans can do. Also, because AI has its boundaries, datasets will often only have some of the information; algorithms could be built on assumptions that are biased; and AI tools, even if they are well-designed, can be used in a bad way. Some people think that AI could lead to complete freedom and fairness. But bias in the data would be a much bigger problem than bias in the arbitrator, since the latter can be assumed and the arbitrator can be challenged. For example, if most judges in investor-state arbitrations tend to support the investors, so will the AI. In the same way, data bias could lead to machines that are biased based on race or gender.

We need to remember that AI is not magic; it's just numbers with a cool name. For decades, people have been trying to automate law, especially the parts that take a lot of time and work. So far, it has only been able to do specific law jobs well and help the practitioners. AI has changed many processes, like e-discovery, and made them much more effective. So, lawyers and law firms should change with the times in order to be more effective. At the same time, technology shouldn't be used too much in the judging process. If it is, it will do more harm than good. Because of this, it is important to know that AI has many problems. AI can't do the work of professionals and judges. The much-talked-about idea of a machine judge, which comes from a different religion, is just a made-up story. We can be sure that the seventh seal will be broken when technology makes it possible for machines to make decisions.

Relevance

Judicial work involves not only the application of the law to facts, but also discretion and, well… judgment. Most cases involve some sort of application of a reasonableness standard (usually known as the reasonable person or reasonable man test) and that requires empathy and an assessment of what would be fair to the parties. Over and above that, judicial work is actually about decision-making to resolve human relationships - or the consequences of their termination. This is a human task that again requires emotional intelligence and an understanding of the human condition.

[2] Aditya Singh Chauhan, Future of AI in Arbitration: The Fine Line Between Fiction and Reality, Kluwer Arbitration Blog (September 26,2020), https://arbitrationblog.kluwerarbitration.com/2020/09/26/future-of-ai-in-arbitration-the-fine-line-between-fiction-and-reality/

AI cannot perform these emotion-based tasks. Put another way, AI does not have emotional intelligence. I personally do not believe that it ever will, but perhaps one day I will be surprised. In that light, I do not believe that AI can ever be a fair judge. It is not able to provide human decisions to human problems.

Put another way: even though law is about certainty and attempting to provide the same remedy to the same problem, human problems have slight nuanced differences to each other that can only be resolved by a judge with emotional intelligence. There are times where I have lost matters even though the weight of case law was behind me because of nuanced emotional aspects that made my client's case not worthy of success. The result was still fair because my client was not in the same position as the litigants in the other decided cases, even though it would appear as if my client was. I feel as quoted- "Computer will overtake humans with AI within the next 100 years. When that happens, we need to make sure the computers have goals aligned with ours".

Suggestions

In order to be eligible to serve as an arbitrator, a person must be an advocate within the meaning of the Advocates Act, of 1961, with 10 years of experience in the field. This requirement was added to the 8th Schedule by the Amendment Act of 2019. Whether or whether this clause also extended to international arbitrators was a subject of some debate. In addition, in the case of a machine arbitrator, the decision of the machine arbitration is already subject to that the panel of arbitrators includes two additional members. They have the right whether or not to accept the machine's decision. AI might be used to address the biases of a human arbitrator, and the impartiality and independence of the arbitrator could be double-checked by comparing the human arbitrator's decision with the decision of the robot. It is recommended that both arbitral institutions and governments create standards and regulations for the control of AI systems. With the adoption of a new protocol or as a timetable under the current Model Law, UNCITRAL can function as the forerunner of the same.

Conclusion

These are pivotal moments in the development of arbitration from a traditional field to one that reflects the current legal landscape. Although recent advancements in the profession have been sluggish, Covid-19 and the new wave of technology it brings to the legal industry will ensure that arbitration catches up. Arbitration would be faster, more efficient, and perhaps even more fair if AI were used. The application of AI must, however, be introduced cautiously and slowly. Therefore, in order to streamline and regulate the process, the ramifications must be addressed.

The states still have a responsibility to make sure they are ready for the impending challenges and to provide acceptable solutions. Furthermore, the accuracy of the algorithm itself, as well as the quality of the data supplied, would ultimately determine the outcomes of AI assisted arbitration. Therefore, it is important to pay attention to data input quality control and to the design of the algorithms.

Last but not least, it is important to note that the introduction of these new technological processes does not intend to undermine or diminish the traditional character of the arbitral process, but rather to supplement it by improving its capacities through the right application of technology. With a lot of room for growth and use, AI in arbitration is establishing itself as a crucial assisting tool

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